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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's
Rules to Establish New Personal
Communication Services

GEN Docket No. 90-314

RM-7140, RM-7175, RM-7618

**REPLY TO OPPOSITION
TO PETITIONS FOR RECONSIDERATION**

The Industrial Telecommunications Association, Inc. ("ITA"), formerly the Special Industrial Radio Service Association, Inc., hereby submits this Reply to the Opposition filed by Sprint Corporation ("Sprint") to various Petitions for Reconsideration in the above-referenced proceeding.

1. The Industrial Telecommunications Association has been following with interest the developments regarding the allocation of spectrum for the new Personal Communication Services ("PCS"). ITA has also participated in this proceeding by filing pleadings at various stages, particularly with respect to the coordination issues involved in introducing unlicensed PCS operations in the band 1890-1930 MHz.

2. Additionally, ITA is a charter member of the Coalition of Private Users of Emerging Multimedia Technologies ("COPE"). On December 23, 1993, COPE filed a Petition for Rule Making with

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the Federal Communications Commission requesting allocation of 75 megahertz of spectrum, to be drawn from the Federal government spectrum or other bands, to establish a Private Land Mobile Advanced Communications Service. COPE is a broadly-based coalition representing entities who require dedicated private communications systems to support industrial, business, public safety and public service operations.

I. There Is A Need For An Allocation Of Spectrum To Accommodate Private Emerging Technology Systems.

3. As documented in COPE's Petition for Rule Making, there is clearly a need for spectrum to accommodate user-operated private emerging technology communication systems. The Petition makes clear that, while carrier-provided PCS systems will be adequate to serve a large number of consumer and routine business needs, there are other critical public safety and industrial requirements that carrier-provided systems will not be able to satisfy.

4. These highly specialized communications needs can only be met through systems having extraordinarily high degrees of reliability, flexibility, user control and responsiveness to changing system parameters. As detailed in COPE's Petition, it is imperative that the FCC allocate a discrete block of spectrum for these private, user-operated emerging technology systems.

5. ITA strenuously disagrees with the fundamental premise underlying Sprint's assertion that "no need exists to allocate PCS spectrum for private use".¹ Sprint suggests that carrier-provided PCS systems will be able to serve the entire universe of highly specialized public safety and industrial communication requirements.² This is clearly not the case.

6. ITA does not dispute the importance of carrier-provided PCS systems. Indeed, ITA is a very enthusiastic supporter of PCS and other emerging technology systems. Clearly, ITA and its 9,000 association members will benefit greatly from the emergence of PCS systems. However, it is short-sighted and unrealistic to assume that PCS entrepreneurs will be able to serve all of the essential emerging technology requirements that are essential to meeting society's public safety and industrial needs in the coming decades.³ For this reason, ITA vigorously disputes Sprint's assumptions regarding the future communications

¹ Opposition of Sprint, p. 6

² "(P)ivate users," Sprint asserts, "are free to use commercial PCS offerings which may be customized to meet their needs. Thus, no need exists to allocate PCS spectrum for private use...." [Opposition of Sprint, p. 6]

³ As noted in COPE's Petition for Rule Making, "public safety and other critical private users ... require higher levels of reliability and interference protection than that offered by consumer-oriented, carrier radio services. The average customer of carrier-provided services is far more tolerant of occasional system outages and signal interference than are police, fire, and other critical safety operations. These private users must have near perfect reliability" [COPE Petition, p. 20]

requirements of private users.

II. The Potential For Auction Revenue Is, By Law, Not Relevant To Spectrum Allocation Decisions.

7. Sprint's Opposition is misguided on another fundamental point. Sprint suggests that it is contrary to public policy to allocate PCS spectrum for private use because such an allocation "would not provide auction revenue to the government."⁴ As Sprint is likely aware, when Congress authorized the FCC to assign spectrum through competitive bidding procedures, it emphatically prohibited the Commission from basing "its findings of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding"⁵

8. Neither the legislation nor the Congressional intent could be any more explicit. When the Commission considers whether a proposed allocation of spectrum will serve the "public interest, convenience, and necessity," it is entirely irrelevant whether the allocation will generate auction revenues for the Federal government. Congress intended this result. The

⁴ Opposition of Sprint, p. 6.

⁵ Section 309(j)(7) of the Communications Act of 1934, as amended; enacted under the Omnibus Budget Reconciliation Act of 1993, signed into law August 10, 1993, Pub. L. No. 103-66, Title VI, Section 6002(a), 107 Stat. 312 (1993).

Congressional intent is clear on its face. The Congressional intent has been noted by the Commission.⁶

9. In view of the foregoing discussion, Sprint's comment regarding the implications of potential "auction revenue" is erroneous and irrelevant. The Commission must disregard this comment.

⁶ Notice of Proposed Rule Making, PP Docket No. 93-253, adopted September 23, 1993, 8 FCC Rcd. 7635. At paragraph 14, this proposal states "(i)n making the spectrum allocation decisions and in prescribing regulations under Section 309(j)(4)(C), the Commission is not permitted to base a finding of public interest, convenience, and necessity on the expectation of Federal revenues that would result from the use of competitive bidding."

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits this Reply to the Opposition filed by Sprint Corporation and urges the Federal Communications Commission to act in accordance with the views expressed herein.

INDUSTRIAL TELECOMMUNICATIONS
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Date: January 19, 1994

CERTIFICATE OF SERVICE

I, Gail L. Burns, do hereby certify that on the 19th day of January 1994, I forwarded to the parties listed below a copy of the foregoing Reply to Opposition to Petitions for Reconsideration, by first-class mail, postage pre-paid:

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